

**FIRST JUDICIAL DISTRICT COURT  
COUNTY OF RIO ARriba  
STATE OF NEW MEXICO**

**IN THE MATTER OF THE ESTATE OF:  
JOHN DENNIS WELLS, Deceased**

No. D-117-PB-2013-00016

**OBJECTION TO ESTATE INVENTORY AND  
PETITION TO SEPARATE BANK ACCOUNT AND  
MONEY HELD BY MICHAEL LUTHER WELLS  
FROM ESTATE AND TO DEEM THEM AS NOT PART OF  
ESTATE PENDING DETERMINATION OF OWNERSHIP**

Petitioners Diana Candelaria, Melvyn Apodaca, Chris R. Martinez, Frieda A. Martinez and Steve J. Polaco, through their counsel, New Mexico Legal Aid, by David Benavides, state as follows:

1. Petitioners, through their heirship in the Tierra Amarilla Land Grant, a political subdivision of the State of New Mexico, have an interest in, and have an interest in preserving for the land grant, assets that are purported to be estate assets in this proceeding but instead are likely part of some \$200,000-plus belonging to the land grant and allegedly misappropriated by the decedent after he had received that amount of money, holding himself out to be acting in the capacity as an elected member of the Board of Trustees of the Tierra Amarilla Land Grant, as payment for a mineral-rights agreement the Board of Trustees had entered into.

2. Petitioners further believe that there may be additional, similar assets deriving from the same \$200,000-plus that may not be inventoried, belonging to the Tierra Amarilla Land Grant, that are now wrongfully possessed by, or have been wrongfully transferred to, various heirs of decedent's estate.

3. La Merced del Pueblo de Tierra Amarilla, also known as the Tierra Amarilla Community

Land Grant, also known as the Tierra Amarilla Land Grant (hereinafter, "Tierra Amarilla Land Grant" or "TALG"), located in Rio Arriba County, is a land grant-merced duly organized as a political subdivision of the state under Chapter 49, Article 1 of the New Mexico Statutes, NMSA 1978, § 49-1-1 et seq.

4. Petitioners are heirs, as defined in NMSA 1978, § 49-1-1.1, of the Tierra Amarilla Land Grant.

5. John Dennis Wells, deceased, was a valid heir of the Tierra Amarilla Land Grant and served as the former President of the Board of Trustees of the Tierra Amarilla Land Grant and held himself out to be the President of the Board of Trustees of the Tierra Amarilla Land Grant for a number of years prior to his death on March 11, 2013.

6. Earlier this year, the New Mexico Office of the State Auditor released information resulting from its investigation into the disposition of \$233,979.73 paid to the Tierra Amarilla Land Grant in 2011 by Wind River Energy Corporation for a waiver by the land grant of certain mineral rights.

7. In a letter to New Mexico State Representative Miguel P. Garcia, Chair of the Interim Land Grant Committee, dated April 29, 2014, attached hereto as Attachment A, the State Auditor stated that, after subpoenaing and examining bank records, his investigators discovered "questionable practices by the former TALG board president", [i.e., John Dennis Wells]. Attachment A at 1.

8. Among such questionable practices discovered, the investigators found that "[a] significant amount of funds were withdrawn by cash withdrawal slips, checks, ATM withdrawals", and other methods, without any of such financial transactions having itemized support documents, such as approvals, purchase orders, etc. Attachment A at 1-2. The

investigators further traced a number of these expenditures as being for personal purposes, such as dental work, purchases at casinos, and online prescriptions. *Id.*

9. The State Auditor further indicated that his office had reported its findings to a number of agencies, including the FBI and the New Mexico Attorney General, because of potential criminal violations. Attachment A at 2. The implication is that there is substantial suspicion that decedent misappropriated a significant amount of the funds received from Wind River Energy Corporation for his personal use.

10. Upon information and belief, the decedent initially deposited the entire \$233,979.73 of the funds received on May 28, 2011 from Wind River Energy Corporation in bank accounts designated for the Tierra Amarilla Land Grant upon which he (decedent) was a signatory, but by the time of his death on March 11, 2013 had withdrawn all but \$21,000-some of those monies for personal use or transferred them to personal (non-land grant) bank accounts.

11. NMSA 1978, § 49-1-14 (A) provides that members of the Board of Trustees of a land grant-merced may only receive a salary if the amount is fixed in the bylaws, and that the amount shall not exceed \$200.00 per month, or \$225.00 per month for the secretary of the Board.

12. The bylaws of the Tierra Amarilla Land Grant do not fix an amount for a salary for any of the members of the Board of Trustees.

13. The April 29, 2014 letter further stated that the Office of the State Auditor had notified Ms. Veronica Wells, through her attorney, of the actions taken by it. Attachment A at 2. Ms. Wells was appointed as Personal Representative in this case by Order of this Court entered June 20, 2013.

14. On May 9, 2014, Ms. Wells, in her capacity as Personal Representative, filed in this case an Inventory and Appraisal of the decedent's estate. Among the items listed were an

account at Bank of America in the amount of \$2,460.83 and "Money held by Michael Luther Wells" in the amount of \$5,603.79.

15. Ms. Wells, in her initial Petition in this case, attached as an exhibit an Affidavit of Collection of Estate Assets by Michael L. Wells, submitted pursuant to NMSA 1978, § 45-3-1201 and executed on April 11, 2013, in which he claimed entitlement to all of two bank accounts associated with the deceased, John Dennis Wells. Petition of an Heir for Adjudication of Intestacy and Appointment of Personal Representative, filed April 26, 2013, Exhibit 2.

16. Ms. Wells, in her initial Petition in this case, requested the Court to order Michael L. Wells to "turn over the contents" of the two bank accounts to her, *id.* at 4, presumably because she believed the funds in those accounts belonged to the estate and not to Michael L. Wells.

17. Upon information and belief, the "Money held by Michael Luther Wells" listed in the Inventory and Appraisal filed in this case derived from a bank account that was in the name of or under the control of John Dennis Wells at the time of his death.

18. In a letter to Ms. Veronica Wells, addressed in care of her attorney, Steven J. Clark, dated May 13, 2014, attached hereto as Attachment B, the Chief General Counsel for the Office of the State Auditor reiterated, in somewhat less detail, the findings made and actions taken by that office regarding the activities of John Dennis Wells that had been recounted in the April 29, 2014 letter to Representative Miguel P. Garcia.

19. On May 16, 2014, the first of two publications of a Notice to Creditors in this case was published in the Albuquerque Journal, notifying creditors that claims were required to be presented within two months of the first publication. See Affidavit of Publication, filed in this case on June 6, 2014.

20. There is a strong likelihood, given the findings of the Office of the State Auditor, that

monies in bank accounts that were in the name of or under the control of the deceased at the time of his death were in fact funds owned by and belonging to the Tierra Amarilla Land Grant. Such funds should not be deemed as part of the estate of the deceased.

21. For these reasons, Petitioners object to the inventory of decedent's estate filed May 9, 2014 in this case, insofar as the inclusion of the account at Bank of America in the amount of \$2,460.83 and "Money held by Michael Luther Wells" in the amount of \$5,603.79 as part of the estate of the deceased. There is no objection to the specific remaining 5 items listed in the inventory, i.e., golf clubs, oil painting, CD collection and two motor vehicles.

22. Given that the Tierra Amarilla Land Grant is a public, local governmental unit under state statute, the funds received by the decedent were public funds received while holding himself out in the capacity of an elected public official, and decedent's alleged diversion of such funds would constitute misappropriation of public monies by a public official.

23. Neither the Tierra Amarilla Land Grant nor the Petitioners acting as tenant-in-common with the Board of Trustees are creditors under the New Mexico Probate Code; rather they are victims of alleged criminal activity and are entitled to restoration of public funds to the public entity to which those monies belong.

24. Property which belongs to a land grant-merced may be held by valid heirs, including officers and former officers of the land grant-merced, as tenants-in common with the board of trustees of the land grant-merced. Such holding of property does not alter the character of the property as belonging to the whole, i.e., the tenancy in common. *See, Cebolleta Land Grant ex rel. Bd. of Trs. of the Cebolleta Land Grant v. Romero*, 1983-NMSC-043, ¶10, 98 N.M. 1, 644 P.2d 515 (1982).

25. Petitioners, as tenants-in-common with the Board of Trustees of the Tierra Amarilla

Land Grant, may take actions to protect the real and personal property of the tenancy in common even in the absence of such action by the Board of Trustees. *See, id.*

26. There is presently no valid Board of Trustees of the Tierra Amarilla Land Grant.

27. Petitioners will soon be filing an action in state district court seeking an order directing that an election for all positions of the Board of Trustees for the Tierra Amarilla Land Grant be held as soon as practicable.

28. In the meantime, Petitioners are taking this action to protect the above-referenced property of the tenancy in common. Petitioners seek restoration of these monies only as stated herein, understanding that any such relief granted would inure to the benefit of the tenancy and not to themselves individually apart from the tenancy. *See, id.*

29. Petitioners, along with the general public, only recently, i.e., in the last few months, learned of the findings of the Office of State Auditor's investigation and did not previously have knowledge of the existence of credible evidence to support this Petition and to support the separation of the above-referenced property from the estate of the deceased.

30. Upon information and belief, the District Attorney's office for the 1st Judicial District has become involved in the investigation of the disposition of the funds referenced above in Paragraph 6 and the actions of the deceased in that regard.

31. Upon information and belief the Office of the State Auditor similarly continues to be involved in the investigation of these matters.

32. Such continued investigation may definitively confirm that the monies referenced in Paragraph 14 above are funds owned by and/or belonging to the Tierra Amarilla Land Grant.

33. Such continued investigation may also establish through systematic fraud examination similar assets deriving from the same \$233,979.73 that may not be inventoried but that rightfully

belonging to the Tierra Amarilla Land Grant.

WHEREFORE, PETITIONERS PRAY:

1. That the account at Bank of America in the amount of \$2,460.83 and "Money held by Michael Luther Wells" in the amount of \$5,603.79, listed in the inventory of this estate, be separated from and be deemed to not be part of the estate of the deceased in this proceeding, pending a determinative finding as to the ownership status of these funds;
2. That the Court order that the administration of this estate be stayed pending further investigation by the Office of the State Auditor and the agencies to which their investigation has been referred, as referenced above and in Attachments A and B; and
3. For such other relief as the Court may deem appropriate.

Respectfully submitted:

NEW MEXICO LEGAL AID, INC.

/s/ David Benavides  
David Benavides  
P.O. Box 32197  
Santa Fe, New Mexico 87501  
(505) 982-9886  
(505) 216-2997 (fax)  
[davidb@nmlegalaid.org](mailto:davidb@nmlegalaid.org)

Counsel for Petitioners Diana Candelaria, Melvyn Apodaca, Chris R. Martinez, Frieda A. Martinez and Steve J. Polaco

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of July, 2014, I filed the foregoing electronically through the Odyssey system as a “file and serve” pleading which, if accepted for filing, caused counsel for the parties on the service contacts list for this cause to be served via electronic mail.

/s/ David Benavides





State of New Mexico  
**OFFICE OF THE STATE AUDITOR**

**Hector H. Balderas**  
State Auditor

**Carla C. Martinez**  
Deputy State Auditor

April 29, 2014

*Via US Mail*

The Honorable Miguel P. Garcia, Chair  
Land Grant Committee  
C/O Legislative Council Service  
State Capitol, 490 Old Santa Fe Trail  
Santa Fe, New Mexico, 87501

**Re: Tierra Amarilla Land Grant – Update on Status of the State Auditor's Investigation**

Dear Chairman Garcia:

The purpose of this letter is to update you and your committee on the status of Office of the State Auditor's (OSA) investigation into the disposition of \$233,000 paid to the Tierra Amarilla Land Grant (TALG) by the Wind River Energy Corporation in 2011 for certain mineral rights. I appreciated the invitation you extended to my office to update the Land Grant Committee on November 19, 2013 of the status of our investigation. Since that date, and our receipt of your November 4, 2013 letter in which you requested our assistance, we have made every effort to expedite our review of this matter, including pursuing legal action to obtain necessary documents.

Our investigation into the receipt and use and of these funds has proceeded over several months. Pursuant to the Audit Act, Sections 12-6-1 through 12-6-14 NMSA 1978, and the Audit Rule, 2.2.2.15(C)(1) NMAC, OSA investigators conducted certain fact-finding procedures in connection with the investigation. Among these procedures, the OSA exercised the State Auditor's subpoena authority under state law to obtain all TALG bank records from the bank which holds the accounts for the TALG. These documents proved critical to the investigation. My investigators have also met with TALG representatives, local community leaders, and your Land Grant Committee's staff attorney with the Legislative Council Service.

Based on our research and investigation, we discovered the following questionable practices and transactions by the former TALG board president:

- o No itemized support documents, purchase orders, approvals, receipts, per diem or reimbursement vouchers for any financial transactions;

*Attachment A*

2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507  
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<http://www.osanm.org> • 1-866-OSA-FRAUD

- A significant amount of funds were withdrawn via cash withdrawal slips, checks, ATM withdrawals, POS purchases, debit purchases and fees;
- Questionable transactions included purchases at casinos, gas stations, hotels, online prescriptions and retail stores;
- Checks were written for dental work, a used car and residential carpet; and
- Bank fees included foreign currency exchange charges.

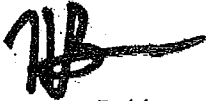
Given these troubling findings, my office sent confidential referrals of potential criminal violations to the Federal Bureau of Investigation, the New Mexico Attorney General, the First Judicial District Attorney and the Taxation and Revenue Department's Tax Fraud Investigations Division. Pursuant to Section 12-6-6 NMSA 1978 and Subsection K of 2.2.2.10 NMAC, "the State Auditor shall immediately report a violation of a criminal statute in connection with financial affairs to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation." Also, because the former TALG board president in question is deceased and his estate is currently in probate, my office has notified the estate's applicant, through her attorney, of the actions taken by the OSA.

Additionally, OSA staff conducted a review of the TALG's compliance with financial reporting requirements of the Audit Act. Our review revealed that for several years the TALG has failed to submit certain financial reports and certifications to the OSA which are required by state law. At a minimum, the TALG is required to receive a "Tier 4" agreed-upon procedures engagement due to the land grant's receipt of the \$233,000 from the mineral rights sale. The engagement must be conducted by an independent public accountant pursuant to the Audit Act's tiered system of financial reporting, and my office has officially notified the TALG of this requirement. To date, the OSA has not received an official response from the TALG to our notification. However, I am committed to working proactively with designated representatives of the land grant to bring the TALG into compliance with all financial reporting requirements under the Audit Act and the Audit Rule. It is imperative that full accountability related to the TALG's financial affairs be restored so the community can move forward from this unfortunate situation.

Finally, I should note that these developments evidence the need for additional resources to strengthen fiscal training and assistance for smaller rural political subdivisions, particularly land grants. I was encouraged to learn that in the fiscal year 2015 state budget the Legislature doubled funding to the Land Grant Council as compared with fiscal year 2014, from \$50,000 to \$100,000. Under the Land Grant Support Act, the Land Grant Council is charged with providing "advice and assistance to land grants" in various areas, including fiscal management and financial accountability. The Council also serves as a liaison between land grants and state agencies. My office stands ready to work with your Committee, the Land Grant Council and the Local Government Division of the Department of Finance and Administration in order to strengthen cooperation and oversight in this regard.

The OSA stands ready to assist you and the Committee in any way regarding matter. Should you or any member of the Committee have any questions, please do not hesitate to contact Patrick P. Stewart, Special Investigations Division Bureau Chief, [patrick.stewart@osa.state.nm.us](mailto:patrick.stewart@osa.state.nm.us) or Evan Blackstone, Esq., OSA Chief of Staff [evan.blackstone@osa.state.nm.us](mailto:evan.blackstone@osa.state.nm.us), 505-476-3800.

Respectfully,

A handwritten signature in black ink, appearing to be 'HB' followed by a horizontal line.

Hector Balderas  
State Auditor



State of New Mexico  
*OFFICE OF THE STATE AUDITOR*

Hector H. Balderas  
State Auditor

Carla C. Martinez  
Deputy State Auditor

May 13, 2014

Ms. Veronica Wells C/O  
Steven J. Clark, Esq.  
1895 Bosque Farms Boulevard  
Bosque Farms, New Mexico 87068

Re: Tierra Amarilla Community Land Grant/Estate of John Dennis Wells

Dear Ms. Wells,

This letter is to inform you, through your attorney, as the applicant to the Estate of the late John Dennis Wells, of actions taken by the New Mexico State Auditor's Office (OSA) in connection with the financial affairs of Tierra Amarilla Community Land Grant (TALG) and the former TALG board president, the late John Dennis Wells.

Pursuant to the Audit Act, Sections 12-6-1 through 14 NMSA 1978 and specifically the Audit Rule, 2.2.2.15 C (1) NMAC, the State Auditor may conduct fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, independent public accountants or members of the public.

Consequently, pursuant to the State Auditor's subpoena authority provided in Section 12-6-11(B) NMSA 1978, the OSA served a subpoena for all bank records related to the TALG upon the bank holding the accounts for the land grant. Based on the information contained in the subpoenaed documents, the OSA discovered questionable practices and transactions involving the financial affairs of the TALG and its former board president.

Pursuant to Section 12-6-6 NMSA 1978 and Subsection K of NMAC 2.2.2.10; which provides that upon discovery, "the State Auditor shall immediately report a violation of a criminal statute in connection with financial affairs to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation." Based on this, the OSA sent confidential criminal referrals to the; Federal Bureau of Investigation, the New Mexico Attorney General, the First Judicial District Attorney and the Taxation and Revenue Department's Tax Fraud Investigations Division.

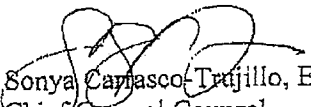
Attachment B

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The OSA also reminded the aforementioned agencies that because the matter is currently in probate, D-117-PB-201300016; they were advised that they may file a Demand for Notice pursuant to the provisions in Section 45-3-204 NMSA 1978.

Please accept my condolences regarding your loss and the timeliness of this correspondence. Should you or your attorney have questions regarding this letter please do not hesitate to contact our office.

Respectfully,



Sonya Camasco-Trujillo, Esq.  
Chief General Counsel  
Office of the State Auditor